

**This Notice is pending publication in the Federal Register. Publication in the Federal Register will start the public comment process. HUD will not accept public comments in advance of publication of this Notice in the Federal Register.**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-5173-N-05]**

**Affirmatively Furthering Fair Housing Assessment Tool:  
Solicitation of Comment – 30-Day Notice under Paperwork Reduction Act of 1995**

**AGENCY:** Office of General Counsel, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice solicits public comment, for a period of 30 days, consistent with the Paperwork Reduction Act of 1995 (PRA), on the Assessment Tool that would be provided by HUD for use by program participants in completing their assessment of fair housing as required by HUD's Affirmatively Furthering Fair Housing (AFFH) rule. The purpose of the assessment of fair housing (AFH) is to aid HUD program participants in carrying out their statutory duty to affirmatively further fair housing. The Assessment Tool is designed to guide HUD program participants in undertaking a more thorough evaluation of fair housing issues in their respective jurisdictions, and setting goals to overcome issues that are barriers, among other things, to fair housing choice and opportunity. As stated in HUD's September 26, 2014, notice, this Assessment Tool is designed primarily for entitlement jurisdictions and for entitlement jurisdictions partnering with public housing agencies to use in submitting an AFH. The "primary" design is also for local governments and consortia required to submit consolidated plans under HUD's Consolidated Plan regulations. Although in the September 26, 2014, notice, HUD previously stated this assessment tool would not be used for regional collaborations, HUD believes that, given the changes made to this assessment tool based on comments received, this assessment tool can also be used for regional collaborations.

The Assessment Tool published on September 26, 2014 provided a 60-day comment period, which commenced the notice and comment process required by the PRA. This 30-day notice completes the public comment process required by the PRA. With the issuance of this notice, and following consideration of public comments received in response to this notice, HUD will seek approval of the Assessment Tool from the Office of Management and Budget (OMB) and assignment of an OMB control number. In accordance with the PRA, the Assessment Tool will undergo this public comment process every 3 years to retain OMB approval.

With this 30-day notice, HUD is publishing two formats of the same assessment tool, each with the same content but slightly different organization. Specifically, the placement of the contributing factor analysis is the only difference between the two formats of the assessment tool. HUD is seeking comments on which format would be the most effective and efficient for program participants to use in conducting the required analysis of contributing factors and related fair housing issues.

**DATES:** Comment Due Date: **[Insert Date 30 days after date of publication in the FEDERAL REGISTER.]**

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

**1. Submission of Comments by Mail.** Comments may be submitted by mail to

the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (fax) comments are not acceptable.

**Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and

downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10282, Washington, DC 20410-0500; telephone number 202-708-1793 (this is not a toll-free number). Persons who are deaf or hard of hearing and persons with speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 19, 2013, at 78 FR 43710, HUD published, for public comment, a proposed rule entitled “Affirmatively Furthering Fair Housing” (AFFH). The July 19, 2013, AFFH rule proposed a new approach that would enable program participants to more fully incorporate fair housing considerations into their existing planning processes and assist them in complying with their duty to affirmatively further fair housing as required by the Fair Housing Act (Title VIII of the Civil Rights Act) and other authorities. The new process, the Assessment of Fair Housing (AFH), builds upon and refines the prior fair housing planning process, called the analysis of impediments (AI). As part of the new AFH process HUD advised that it would issue an “Assessment Tool” for use by program participants in completing and submitting their AFHs. The Assessment Tool, which includes instructions and nationally-uniform data provided by HUD, consists of a series of questions designed to help program participants identify, among other things, areas of racially and ethnically concentrated areas of poverty, patterns of integration and segregation, disparities in access to opportunity, and

disproportionate housing needs.

At the time of publication of the July 19, 2013, AFFH proposed rule, HUD also posted and sought public comment on a draft “Data Documentation” paper online at [www.huduser.org/portal/affht\\_pt.html](http://www.huduser.org/portal/affht_pt.html) (under the heading Data Methodology). HUD requested public comments on the categories, sources, and format of data that would be provided by HUD to program participants to assist them in completing their AFH, and many program participants responded with comments on the Data Documentation paper.

The Assessment Tool that HUD issued for public comment on September 26, 2014 (79 FR 57949) (Initial Assessment Tool), and found at [www.huduser.org/portal/affht\\_pt.html](http://www.huduser.org/portal/affht_pt.html) was, as HUD noted in the Summary of this notice, primarily designed for use by entitlement jurisdictions and by entitlement jurisdictions and PHAs that are jointly submitting an AFH. As further noted in the Summary, the Assessment Tool, which was the subject of the September 26, 2014, notice and this notice, is also designed for use by local governments and consortia required to submit consolidated plans under HUD’s Consolidated Plan regulations, codified in 24 CFR part 91, specifically subparts C and E, which pertain to local governments and consortia.<sup>1</sup> In this notice, HUD uses the term “entitlement jurisdictions” to refer to all jurisdictions for which this tool is primarily designed.

In the September 26, 2014, notice HUD also advised that the Initial Assessment Tool was not the tool that would be used by the following program participants: PHAs that would not be making a joint submission; States; and Insular Areas. While the Initial

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<sup>1</sup> In HUD’s AFFH proposed rule published on July 19, 2013, at 78 FR 43710, HUD noted that a consortium participating in HUD’s HOME Investment Partnerships program (HOME program), and which term (consortium) is defined 24 CFR 91.5, must submit an AFH. HUD stated that a HOME consortium is considered a single unit of general local government (see 78 FR at 43731).

Assessment Tool was tailored primarily for entitlement jurisdictions and joint submissions by entitlement jurisdictions and PHAs, HUD invited comments by all types of program participants, as it, “present[ed] the basic structure of the Assessment Tool to be used by all program participants, and is illustrative of the questions that will be asked of all program participants.”

HUD followed the September 26, 2014, publication with a notice published on January 15, 2015, at 80 FR 2062, which solicited public comment on a staggered submission deadline for AFHs to be submitted for specific types of program participants. In the January 2015 notice, HUD advised that it was considering providing certain HUD program participants—States, Insular Areas, qualified PHAs,<sup>2</sup> and jurisdictions receiving a small Community Development Block Grant (CDBG) grant with the option of submitting their first AFH at a date later than would otherwise be required for other program participants. In addition to proposing a staggered submission deadline, HUD had previously announced that it would be developing separate assessment tools for certain types of program participants, including States and insular areas, PHAs and program participants submitting AFHs in a regional collaboration.

## **II. The 60-Day Notice and Initial Assessment Tool**

In developing the assessment tool, HUD had four key objectives in mind. First, the assessment tool must ask questions that would be sufficient to enable program participants to perform a meaningful assessment of key fair housing issues and contributing factors<sup>3</sup> and set meaningful fair housing goals and priorities. Second, the

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<sup>2</sup> Section 2702 of title II of the Housing and Economic Recovery Act (HERA) defined “qualified PHAs” as PHAs that have fewer than 550 units, including public housing and section 8 vouchers.

<sup>3</sup> The term “fair housing determinants” was changed to “fair housing contributing factors” in the AFFH final rule. This notice therefore uses the term “fair housing contributing factors.”

assessment tool must clearly convey the analysis of fair housing issues and contributing factors that program participants must undertake in order for an AFH to be accepted by HUD. Third, the assessment tool must be designed so program participants would be able to use it to prepare an AFH that would be accepted by HUD without unnecessary burden. Fourth, the assessment tool must facilitate HUD's review of the AFHs submitted by program participants, since the Affirmatively Furthering Fair Housing rule requires HUD to determine within a certain period of time whether to accept or not accept each AFH or revised AFH submitted to HUD.

With these objectives in mind, HUD issued the Initial Assessment Tool for public comment for a period of 60 days. The 60-day notice then provided a detailed description of the five main sections of the Assessment Tool: Section I – Cover Sheet and Certification; Section II – Executive Summary; Section III – Community Participation Process; Section IV– Analysis; and Section V – Fair Housing Goals and Priorities.

In the 60-day notice, in addition to soliciting comment on the Initial Assessment Tool overall, HUD specifically solicited comments on the following topics:

1. The description of local data and local knowledge;
2. The clarity of the options for including information about the community participation in the AFH;
3. The adequacy of the list of determinants (now contributing factors) in order to produce a meaningful AFH;
4. Aspects of the Publicly Supported Housing (PSH) subsection, specifically: (a) the type of program participant required to include project-level data in tabular format for various categories of PSH; (b) the formatting of the tables; (c) the most

- effective ways of providing assessment of project-level data in an Assessment Tool used by States;
5. Whether HUD inadvertently failed to consider fair housing issues relating to individuals with disabilities by considering Disability and Access issues separately;
  6. The sufficiency and clarity of the Initial Assessment Tool for addressing additional fair housing issues and inability to answer questions due to a lack of data and whether HUD should include instructions on how to address these issues;
  7. The content of the tool, the clarity of the questions, and areas of information that are included in the tool, but that are unnecessary to conduct a meaningful AFH, and areas that HUD may have overlooked that should be included in the Initial Assessment Tool;
  8. Whether the Initial Assessment Tool can be used by program participants independently, without the need to rely on outside contractors to conduct an AFH;
  9. Any additional instructions that would be helpful;
  10. The costs associated with gathering and analyzing data necessary for conducting an AFH;
  11. Whether program participants anticipate using federal funds to complete an AFH;
  12. What strategies program participants can use to reduce the cost and burden of completing an AFH and how to reduce costs of obtaining local data and local knowledge;
  13. How do program participants envision joint participation in completing the AFH;



14. Whether the proposed collection of information is necessary for the proper performance of the agency and whether it will have practical utility;
15. The accuracy of the agency's estimate of the burden of collecting the information;
16. Ways to enhance the quality, utility, and clarity of the information to be collected; and
17. Ways to minimize the burden of the collection on those who are required to respond.

### **III. Public Comments on the 60-Day Notice**

By the close of the comment period on November 25, 2015, HUD received 198 public comments. Commenters included PHAs, CDBG grantees, including States and local governments, advocacy groups, nonprofit organizations, and various individuals. All public comments received in response to the 60-day notice can be found at: <http://www.regulations.gov/#!documentDetail;D=HUD-2014-0080-0001>. HUD appreciates the time and effort of all the public commenters in preparing their comments. The information was helpful and valuable.

This section provides a summary of the most significant issues raised by commenters and HUD's responses, including where HUD made changes to the Assessment Tool.

#### **Overview of Significant Issues Raised**

The majority of comments offered positive and constructive recommendations for improving the Assessment Tool. Many commenters provided suggestions for expanding certain portions of the assessment tool and for improving the questions and analysis required. Many comments also raised concerns about the assessment tool's

burden, the timing of introducing a new analysis mechanism, the reliability of the data to be provided, and its content and the impact on specific types of program participants, including small entities, States, and others. The areas of concern identified by the majority of commenters are discussed below.

### *Burden*

Many commenters stated that the Initial Assessment Tool imposes a significant burden on program participants in several ways. They stated that the amount of time and resources required to complete the Initial Assessment Tool itself is unduly burdensome, especially in light of the amount of local data and local knowledge that program participants must use. Commenters also stated that the community participation process could be very burdensome, especially for jurisdictions such as an entire State.

Commenters stated that the additional time and resources required to conduct the type of community participation contemplated would be unduly burdensome. Commenters further stated that the amount of information, both HUD-provided data supplemented by local data and local knowledge, and the number of questions, makes the Initial Assessment Tool unreasonably complex and would likely result in the additional burden of having to hire a consultant in order to complete the AFH.

Commenters also stated that the Initial Assessment Tool would be overly and unnecessarily burdensome on States. While commenters stated that they understood there would be a separate assessment tool for States, they nevertheless expressed concern with having to analyze data that entitlement jurisdictions in their respective States may have already analyzed in preparing their own AFHs. The commenters stated that States should not have to engage in duplicative, redundant analyses.

Other commenter stated that they thought the Initial Assessment Tool would clarify the “region” to be analyzed by program participants because the rule did not provide sufficient specificity.

### Timing

Several commenters stated that the release of the Initial Assessment Tool is premature. They stated that the AFFH rule should be finalized, the development of the other types of assessment tools to be used should be completed, and that HUD should wait to complete development of the Assessment Tool based on the recent disparate impact case and the upcoming Supreme Court case, which was heard in early 2015 and decided June 25, 2015. The Supreme Court ruled that the Fair Housing Act prohibits discrimination caused by policies or practices that have an unjustified disparate impact because of race, color, religion, sex, familial status, national origin, or disability. Texas Dep’t of Hous. & Cmty Affairs v. Inclusive Cmty’s Project, No. 13-1371, 2015 U.S. LEXIS 4249 (June 25, 2015). In that decision, the Supreme Court also acknowledged “the Fair Housing Act’s continuing role in moving the Nation toward a more integrated society.” Id. at \*42.

### Data

Commenters stated that the Initial Assessment Tool requires too much local data and local knowledge. Other commenters took issue with the data provided by HUD, stating that, in the past, HUD data has been inaccurate and out of date. Commenters stated that the HUD-provided data is unwieldy and difficult to understand. Several commenters specifically referred to the efficacy of using dot density maps and the requirement that the analysis be conducted by neighborhood when the data is at the

Census tract level.

Commenters stated that, assuming the HUD-provided data is reliable, the data is most useful at the regional level, but will be inefficient for use by States. Other commenters requested that the HUD-provided data include datasets of local information that are already available to HUD, so that program participants need not expend additional resources to gather such data.

*Content of the Assessment Tool*

Several commenters stated that the Initial Assessment Tool is too subjective, stating that the Initial Assessment Tool makes an inappropriate leap from correlation to causation. The commenters stated that there may be alternative causes for the demographic makeup of a certain jurisdiction. Commenters requested that HUD eliminate any questions in the Initial Assessment Tool requiring an essay-type of response, which, the commenters stated, only adds to the subjective nature of the analysis. These commenters stated that they believe the Initial Assessment Tool will not achieve its stated objective because it promotes the creation of policy based on incomplete, and often subjective, information.

Commenters stated that they found the Initial Assessment Tool to be incomplete. These commenters stated that HUD should be asking different questions than those posed in the Initial Assessment Tool, or should add questions to account for situations that HUD may have overlooked. For example, several commenters expressed appreciation for the separate section in the Initial Assessment Tool dedicated to Disability and Access Issues. However, other commenters stated that disability should be a topic that is discussed throughout the Initial Assessment Tool and not confined to one section.

Other commenters stated that HUD does not adequately take into account the issues of housing opportunity and equity affecting women, especially in terms of domestic and sexual violence issues, and lesbian, gay, bisexual, transgender (LGBT) individuals and families. Commenters stated that while there is a lack of data on LGBT individuals and families at the national level, the next version of the assessment tool could provide a mechanism to begin gathering such data. Commenters also made recommendations about items that should be added to the list of contributing factors and suggested edits to the existing language in the Initial Assessment Tool.

Several commenters raised concerns about the Dissimilarity Index. The commenters stated that the next version of the assessment tool should use multiple measures of segregation, because, according to the commenters, the Dissimilarity Index alone is insufficient to fully understand residential segregation patterns in a community and region. The commenters recommended that HUD include additional measures of segregation besides only providing the Dissimilarity Index.

Many commenters stated that the lack of a section on “Action Steps” to be taken by program participants weakens the overall purpose of the AFH, and inclusion of such a section would aid in enforcement.

Other commenters stated that the Initial Assessment Tool lacked sufficient guidance for program participants. The commenters requested that HUD define certain terms, add clearer instructions, provide hands-on, in-person training for completing the tool, and develop a helpline at HUD to aid program participants in navigating the complexities of the tool and the data provided.

*Small Entities, Joint Participation, and Local Control Issues*

Commenters that are or that represent small PHAs and small jurisdictions stated that the Initial Assessment Tool would not be useful for them, and would impose a significant burden. These commenters stated that one way to deal with this burden would be for HUD to encourage, or even require, program participants to complete the AFH jointly in order to reduce the costs of the community participation process and the actual analysis conducted in the Initial Assessment Tool. In contrast, other commenters who stated they would be willing to participate in jointly submitting an AFH raised concerns about doing so and signing a joint certification. The commenters requested that HUD modify the certification language because the commenters stated that they cannot attest to the veracity of the information provided by other program participants.

In a similar vein, commenters, mostly States and local governments, expressed concern that the AFH will result in a loss of local control and will interfere with local decision-making. States and local governments, and PHAs all submitted comments relating to their respective scopes of authority with respect to assessing fair housing choice. These commenters stated that the Assessment Tool appears to be asking program participants to conduct an analysis and take actions beyond the scope of their authority in order to implement plans to effect change with respect to fair housing. The commenters stated that they lack control over other entities and, consequently, cannot be expected to implement plans relating to fair housing.

### **III. This 30-day Notice and Revised Assessment Tool**

#### **A. Changes to the Assessment Tool**

##### **General Approach to Content**

In response to public comment HUD has made several changes to the Initial

Assessment Tool, which HUD believes address many of the burden and content concerns expressed by the commenters. These changes have resulted in a revised Assessment Tool (Revised Assessment Tool) that is shorter in length, contains fewer questions, and clarifies many of the questions that were in the previous version, and reduces the need for some duplicative analysis. The Revised Assessment Tool also includes detailed instructions to further assist program participants in answering the questions in the AFH and guide them on how to use the HUD-provided data. It also includes an Appendix providing further detail on each of the Contributing Factors referenced in the tool.

HUD is also providing a link for program participants and the public to the Geospatial Mapping Tool (Data Tool), which contains interactive maps and exportable tables. The Data Tool also attempts to provide greater clarity in response to commenters' concerns about the area of analysis, and provides data for the region based on the program participant's Core-Based Statistical Area (CBSA). The Data Tool will also be posted online at: [http://www.huduser.org/portal/affht\\_pt.html](http://www.huduser.org/portal/affht_pt.html)

The Data Tool contains the same data as that which was released on September 26, 2014, with some minor changes. Now, the data is accessible through an interactive application on a web-based interface. Additionally, Table 14 now includes two transit-related indices.

HUD anticipates further changes to the Data Tool prior to its final release for use by program participants. Some of those anticipated changes include:

- Consolidating several redundant tables;
- Modifications to improve the visual presentation of the maps (i.e., contrast and sizes of dots and icons on maps);

- Improved Data Tool functionality to allow the user to better access data on: 1) locations and demographics of publicly supported housing developments, including census tracts; and 2) the ability to export maps and tables by the program participant for use during the community participation process and as part of the AFH submission to HUD. The export functionality would apply to both maps and tables. It would not only provide access to the data, but also allow users to filter and sort demographic data for both developments and census tracts by common characteristics. The functionality would be similar to that in HUD's CPD Maps tool. This is intended to reduce burden in using the HUD-provided data to answer the required questions in the Assessment Tool while providing the data that will enable program participants to conduct analyses required to identify key fair housing issues;
- Addition of maps to match updates in the Opportunity Indices;
- Additional datasets to correspond with the analysis in the Assessment Tool;
- Minor changes in terminology to match with the AFH Tool and final rule; and
- Minor changes in descriptions of the data provided (i.e., "top 5" becoming "5 most populous").

The Revised Assessment Tool includes substantial revisions to the questions that were in the Initial Assessment Tool. HUD has reduced the total number of questions in the analysis section while improving the clarity and utility of the analysis that is required.



The Initial Assessment Tool would have required contributing factors to be identified twice, once separately and again in answering the specific questions. The Revised Assessment Tool only requires that contributing factors be identified once. The contributing factors analysis has also been revised by removing the previous requirement to list all contributing factors and then rate their degree of significance. In the Revised Assessment Tool, program participants are required to identify those contributing factors that significantly impact specific fair housing issues, and for the purposes of setting goals prioritize them, giving the highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact compliance with fair housing or civil rights law.

In the Revised Assessment Tool, program participants are asked to provide one overarching narrative to justify the prioritization of contributing factors, rather than a separate explanation for each factor and that factor's level of significance as presented in the Initial Assessment Tool. In addition, the requirement to prioritize goals that was in the Initial Assessment Tool is removed in the Revised Assessment Tool. HUD expects that these changes will reduce burden while still providing the needed information and analysis regarding contributing factors. So long as program participants' goals address significant contributing factors and related fair housing issues, and can be reasonably expected to affirmatively further fair housing, participants' goals can vary.

In the Initial Assessment Tool, separate questions that asked about different protected classes have been combined in the Revised Assessment Tool into one question about all protected classes for which data are provided (for example, race, national origin, and limited English proficiency (LEP)). With this change, program participants can now

formulate one answer taking into account all of the data at one time, rather than provide two or three separate answers.

In the Revised Assessment Tool, the wording of certain questions in the analysis section was improved to remove unnecessary complexity and hone the analysis to have the greatest impact. Several questions were reworded to avoid any interpretation that HUD was asking program participants to prepare an “inventory” or long list of projects or developments. Other questions were revised because some program participants might construe them to include unintended requests for unduly complex analyses. HUD found that other questions were worded too broadly and left program participants with uncertainty as to the information needed. These questions were narrowed in scope. Throughout the Assessment, HUD made an effort to clarify questions so program participants would understand the question being asked and the analysis sought.

In response to commenters concerns that the requirement to obtain and use local data was too burdensome, the AFFH Final Rule clarifies that “local data” refer to “metrics, statistics, and other quantified information, that are subject to a determination of statistical validity by HUD, relevant to the program participant’s geographic areas of analysis,” and are data “that can be found through a reasonable amount of searching, are readily available at little or no cost, and are necessary for the completion of the AFH using the Assessment Tool.” This clarification is based on the definition of local data included in the final rule, and referenced in the instructions, as data that is already available and easily accessible by the program participant, or data that can be made available at little or no cost. Local knowledge is also defined in the AFFH final rule as information to be provided by the program participant that relates to the participant’s

geographic areas of analysis and that is relevant to the program participant's AFH, is known or becomes known to the program participant, and is necessary for the completion of the AFH using the Assessment Tool. The instructions in the Revised Assessment Tool elaborate on "information" as including laws and policies, common neighborhood or area names and borders, information about the housing market and housing stock. Program participants are also required to consider additional information obtained through the community participation and consultation process that is required by the rule.

Additional comments were received on the Initial Assessment Tool requesting further instructions and guidance for program participants. Accordingly, instructions have been added to the Revised Assessment Tool. These instructions provide additional explanations on the use of local data and knowledge in addition to the HUD-provided data. The instructions link each question to the specific maps and data tables that are relevant to that question, along with additional considerations or examples that program participants should keep in mind when answering. These instructions add clarity and guidelines for effective use of the assessment tool. Additionally, HUD is providing an additional appendix in the Revised Assessment Tool, Appendix C, which contains short explanations of each contributing factor contained in the Revised Assessment Tool.

The inclusion of instructions also allows HUD to remove blocks of references to maps and tables that were included in various places in the Initial Assessment Tool, and instead provides a list and short description of the data that will be available on the Data Tool in Appendix A (maps) and Appendix B (tables) of the Revised Assessment Tool. These references, while helpful, in some cases provided less guidance and had the effect of breaking up the flow of questions, with the result that the questions were difficult to

comprehend and follow. By removing these references and including instructions HUD believes the Revised Assessment Tool is clearer and easier to understand and complete.

In response to the Initial Assessment Tool, commenters requested more clarity regarding joint submissions. The instructions in the Revised Assessment Tool specify that, when submitting jointly, each program participant is responsible for identifying contributing factors and setting goals within its jurisdiction; however, program participants submitting jointly are permitted to set joint goals where appropriate. The Initial Assessment Tool did not include this instruction.

#### Cover Sheet

HUD is committed to assisting program participants in completing their assessment tool in a manner that will allow them to make progress in affirmatively furthering fair housing. While the Initial Assessment Tool provided, at part I item 12, for “Departmental acceptance or rejection,” the Revised Assessment Tool refers, at item 11, to “Departmental acceptance or non-acceptance.” This change signifies that rather than ending the submission and review of the AFH, non-acceptance will result in a process in which HUD works with the program participant by explaining the reasons for non-acceptance and provides the program participant with an opportunity to submit a revised AFH to address those concerns.

#### Executive Summary

The Initial Assessment Tool only contained a heading of “Executive Summary,” but did not include any further guidance for program participants on what to include in the Executive Summary. The Revised Assessment Tool explains and clarifies the information that program participants should include in the Executive Summary.

### Assessment of Past Goals and Actions

The Initial Assessment Tool sought information, at the very end of the analysis, on past goals and actions, asking “how has the experience ...with past goals influenced the selection of current goals?” HUD proposes to place this information at the beginning of the assessment rather than at the end, so that the assessment of current goals can be informed by past experience. Accordingly, the Revised Assessment Tool moves the assessment of past goals and actions to Section IV, immediately prior to the analysis.

### Analysis

#### Segregation/Integration

The Revised Assessment Tool simplifies this topic, which in the Initial Assessment Tool included segregation, integration, and racially and ethnically concentrated areas of poverty (R/ECAPS) under one heading. However, since segregated neighborhoods may be R/ECAPs, but are not always R/ECAPS, the same analysis may not apply equally to segregation/integration and R/ECAPS. In order to facilitate the analysis in these cases, in the Revised Assessment Tool, R/ECAPS is moved to its own separate subsection, and the questions are narrowed in scope to reflect this change.

Also, in the context of segregation/integration, the Initial Assessment Tool considered the Dissimilarity Index a topic area, B.1, but did not provide sufficient guidance as to how this topic was to be addressed. The Dissimilarity Index is a method of analyzing the degree of segregation or integration in a particular geographic area and serves as an analytical tool rather than being a distinct topic within the analysis. The instructions in the Revised Assessment Tool describe, in detail, how it should be appropriately used in conducting the analysis.

In addition, the Revised Assessment Tool removed B.2., the separate Geographic Analysis subtopic, because a geography-based analysis is already required in the analysis of segregation/integration and R/ECAPS (and, indeed, throughout the assessment tool), and a separate topic on geography is redundant in this context.

#### *R/ECAPs*

As previously discussed in this notice, HUD has created a separate subsection for R/ECAPs, instead of having the analysis be combined with the Segregation/Integration analysis. The Revised Assessment Tool contains questions specifically about R/ECAPs and the questions have been narrowed in scope from the Initial Assessment Tool.

#### *Disparities in Access to Opportunity*

In the Revised Assessment Tool, this topic is changed from the topic entitled “Disparities in Access to Community Assets and Exposure to Adverse Community Factors” in the Initial Assessment Tool to “Disparities in Access to Opportunity.” Instead of two separate topics on disparities in access to community assets and exposure to adverse community factors, the Revised Assessment Tool combines the questions under these topics under a single heading. HUD has also consolidated and streamlined questions, including those on access to jobs, access to transportation, and exposure to poverty and environmental health hazards.

#### *Disproportionate Housing Needs*

In the Revised Assessment Tool, HUD has consolidated certain questions in this section to eliminate duplication.

#### *Publicly Supported Housing<sup>4</sup> Analysis*

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<sup>4</sup> The term “publicly supported housing” refers to housing assisted with funding through federal, state, or local agencies or programs as well as housing that is financed or administered by or through any such

In the Revised Assessment Tool, HUD makes several revisions to this subtopic. Under “Publicly Supported Housing Location and Occupancy,” question ii, which in the Initial Assessment Tool was on “the racial composition of occupants in publicly supported housing in R/ECAPs,” is broadened in the Revised Assessment Tool to “publicly supported housing demographics.” This revision recognizes that segregation in housing can involve protected characteristics other than race.

Also under this subtopic, question iii, iv, and v in the Initial Assessment Tool asked the same question about race or ethnicity of residents of public housing, other HUD multifamily developments, and project-based Section 8 housing, and Low-Income Housing Tax Credit (LIHTC) housing. The Revised Assessment Tool streamlines these questions into a single question to be answered with respect to each of the four categories of housing. Additionally the question itself is streamlined by removing a sentence about segregation that would be redundant of an earlier question under the same topic, and the wording of the subtopic has been simplified to be more understandable. HUD also determined that several questions relating to policies for various housing programs were more appropriately considered in the Contributing Factors analysis.

The Revised Assessment Tool also includes properties converted under the Rental Assistance Demonstration (RAD) in new question (1)(b)(iv)(A).

The Revised Assessment Tool also contains an analysis within the publicly supported housing section of disparities in access to opportunities for residents of

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agencies or programs. HUD is currently providing data on five specific categories of housing: Public Housing; Project-Based Section 8; other HUD multifamily housing (including Section 202 – Supportive Housing for the Elderly, Section 811 – Supportive Housing for Persons with Disabilities, and other multifamily assisted properties); Low Income Housing Tax Credit (LIHTC) housing; and Housing Choice Vouchers (HCV). Other publicly supported housing relevant to the analysis includes housing funded through state and local programs, other federal agencies, such as USDA and VA, or other HUD-funded housing not captured in the five categories listed above.

publicly supported housing.

*Disability and Access Analysis*

The Revised Assessment Tool removes an instruction that was included in the Initial Assessment Tool that read:

There are limited sources of nationally consistent data on the extent to which individuals with different types of disabilities are able to access housing and community assets. To complete this section, program participants should solicit input from individuals with disabilities and disability advocates, who often have the most relevant information on these topics.

This instruction was included in the Initial Assessment Tool to help explain why HUD was placing Disability and Access Issues in a separate section of the AFH analysis.

However, HUD recognizes that this instruction in the Initial Assessment Tool may have been confusing to some public commenters and may have suggested that extra efforts to obtain local data and local knowledge would be required to complete the Disability and Access Issues section of the assessment tool. To eliminate the potential confusion that this instruction may have caused, the instruction in the Revised Assessment Tool identifies specific questions for which HUD provides data as well as those questions for which HUD does not have data. There is no requirement in the Disability and Access Issues section for program participants to make an extra effort to obtain specific local data. Instead, as required in all sections of the Assessment Tool, program participants are only required to obtain and use local data that can be found through a reasonable amount of search and are readily available at little or no cost.

The Disability and Access Analysis section has been streamlined in the Revised Assessment Tool. A question on “the principal challenges faced by persons with disabilities in the Jurisdiction and Region” has been removed, as that question is



answered by the discussion of the disparities in access to opportunity and the contributing factors within the same section. Additionally, the list of opportunity indicators (in the context of disparities in access to opportunity) is streamlined in the Revised Assessment Tool.

In the list of “Disability and Access Issues Contributing Factors,” a new item on “State or local laws, policies, or practices that discourage individuals with disabilities from being placed in or living in apartments, family homes, and other integrated settings” is added in the Revised Assessment Tool. This addition recognizes that there can be laws, policies, or practices affecting persons with disabilities other than land use and zoning laws, especially in the context of the Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999).<sup>5</sup>

#### *Fair Housing Enforcement, Outreach Capacity, and Resources Analysis*

This section, which was titled “Fair Housing Compliance and Infrastructure” in the Initial Assessment Tool, has been abbreviated through the elimination of a question and the questions associated with the contributing factors, and has been renamed in the Revised Assessment Tool.

#### *Contributing Factors*

As noted in the Summary above, HUD is providing two formats of the Revised Assessment Tool for public comment. The two formats do not differ in content or analysis required by the assessment tool, but do differ with respect to where the analysis of contributing factors occurs.

Option A of the Revised Assessment Tool provides a categorized list of the most

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<sup>5</sup> HUD’s Statement on the Role of Housing in Accomplishing the Goals of *Olmstead* can be found at <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

common contributing factors relating to all fair housing issues (but it is not an exhaustive list of all possible contributing factors) in one location following the analysis sections of Segregation/Integration, R/ECAPs, Disparities in Access to Opportunity, and Disproportionate Housing Needs. The same categorized list of contributing factors also follows each of the following sections: Publicly Supported Housing Analysis; Disability and Access Analysis; and Fair Housing Enforcement, Outreach Capacity, and Resources Analysis. In identifying contributing factors, program participants are instructed to note which fair housing issue(s) (Segregation/Integration, R/ECAPs, Disparities in Access to Opportunity, and Disproportionate Housing Needs) the selected contributing factor impacts. Program participants must also include any other contributing factors impacting fair housing issues in their jurisdiction or region that are not included in the provided lists.

Option B of the Revised Assessment Tool contains more discrete lists of the most common contributing factors (but each list is not an exhaustive list of all possible contributing factors) after each section of analysis: Segregation/Integration, R/ECAPs, Disparities in Access to Opportunity, Disproportionate Housing Needs, Publicly Supported Housing Analysis, Disability and Access Analysis, and Fair Housing Enforcement, Outreach Capacity, and Resources Analysis. For the last three sections of analysis, program participants are instructed to note which fair housing issue(s) (Segregation/Integration, R/ECAPs, Disparities in Access to Opportunity, and Disproportionate Housing Needs) the selected contributing factor impacts. It is unnecessary to do this step for the first four sections of Option B because of the placement of the more discrete contributing factor lists after each of those sections.

Program participants are also required to include any other contributing factors impacting fair housing issues in their jurisdiction or region that are not included in the provided lists.

Both formats of the Revised Assessment Tool also contain short explanations of all the listed contributing factors in Appendix C. These explanations provide program participants with additional guidance about each contributing factor, which may enable program participants to make more informed selections of contributing factors when conducting their analyses.

#### *Fair Housing Goals and Priorities*

The Initial Assessment Tool contained a table that seemed confusing, as well as subjective questions that related to the selection and prioritization of contributing factors (then called determinants) and goals. The Revised Assessment Tool provides program participants with additional guidance on how to prioritize contributing factors, creating a more objective framework for analysis. Additionally, the requirement that goals also be prioritized has been removed. The Revised Assessment Tool provides a new table for program participants to use when setting goals. The table is designed to make it easier for program participants to set goals as required by the AFFH final rule.

### **IV. Findings and Certifications**

#### Paperwork Reduction Act

With HUD's decision to prepare program participant-specific assessment tools, the information collection burden addressed in this notice is limited to this assessment tool that has been designed for entitlement jurisdictions and the possibility of program participants seeking to collaborate regionally on an AFH. The public reporting is

estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As HUD is furnishing a significant amount of data directly to the program participants, the burden in completing the Assessment Tool is reduced. Where HUD is not providing data, as noted earlier in this preamble, program participants are to consider and in some cases utilize local data and local knowledge that is available or can be found at little or no cost. This refers to data already publicly available and reasonably easy to access. This does not refer to obscure data that may not be known or easily found, that requires an independent data or information collection effort such as a local survey or that requires extensive analytical expertise or staff effort, for instance, in manipulating data sets or developing a complex methodology for analyzing complex data that may be available. With the data that HUD provides for use with the Assessment Tool supplemented by available local data and local knowledge, HUD does not anticipate the need for any program participant to turn to outside consultants to collect data and conduct the assessment.

In addition, local knowledge may be supplemented with information received through the public participation process. In such cases, program participants retain the discretion to consider data or information collected through this process as well as the manner in which it may be incorporated into the AFH, whether in the Section V (Analysis) or Section III (Community Participation Process) of the AFH, with an option to include extensive or lengthy comments in appendices or attachments. In short, the receipt of extensive public comments may require staff effort to review and consider

input but would not result in a mandate to incur substantial additional costs and staff hours to do so. To the contrary, the public participation process should be viewed as a tool to acquire additional information to reduce burden.

It is also important to note that the estimate of burden, in terms of staff hours and costs, is not an estimate of net new costs. That is, the cost of conducting the existing AI that was a legal obligation prior to the AFFH final rule, and which is now replaced by the AFH, is not deducted from the new estimate. Costs for conducting the AI for entitlement jurisdictions varied substantially and often involved costs for hiring consultants and outside parties to conduct the AI. HUD is making substantial effort and investment, by providing the data and mapping tool and ongoing technical assistance to improve the entire AFH process as compared to the previous, often cumbersome AI process.

#### Changes in Estimate From the 60-Day PRA Notice

Compared to previous hour/burden estimate in the 60-day notice, several key changes, as discussed above, were made in an effort to reduce the burden of the analysis required in the assessment. Changes in the methodology for the estimate of total burden compared to the estimate in the 60-day notice are discussed here below.

In addition, HUD is revising the estimate of how many program participants will employ this version of the Assessment Tool, by lowering the estimate of the number of PHAs that will likely engage in joint collaboration with block grant entitlement jurisdictions from one-half of all PHAs to approximately one-third of all PHAs. Many PHAs will however continue to engage in joint participation for the completion of the AFH, for instance by partnering with a State entity, particularly in the case of small PHAs who are located outside the geographic area of an entitlement jurisdiction.

In addition to the changes discussed, HUD has also increased its estimate of the burden involved in completing an AFH using this Assessment Tool. While the Revised Assessment Tool has been streamlined compared to the Initial Assessment Tool, many public comments were received during the 60-day public comment period stating that the 200-hour per program participant estimate as too low. Accordingly, HUD has increased this to 240 hours per entitlement jurisdiction submitting an AFH. However, it is not likely that all entities participating together will all incur the full cost as they would if they were submitting an AFH separately. Thus, the hour estimate for PHA partners using this Assessment Tool is estimated at 120 hours, which would include fixed costs (e.g. staff training, conducting community participation, setting PHA goals) but includes reduced costs for performing the entirety of the assessment itself. It is also foreseeable that many entities will choose to divide responsibilities differently based on their local characteristics and that the split of hours used for the overall estimate may vary in many cases.

#### Costs in the First Year

Approximately 25 entitlement jurisdictions will be required to submit an AFH in the summer and fall of 2016. In recognition of the need to mitigate any new burden associated with this effort, the AFFH final rule provides for staggered submission of AFHs. Staggered submission delays the application of the AFFH final rule for certain program participants, such as States, Insular Areas, and PHAs that opt to submit their own AFH without an entitlement jurisdiction partner. In addition, because of the Consolidated Plan cycle, a relatively small group of program participants will submit an AFH within the first year following the effective date of the AFFH final rule, but the

majority of program participants will be submitting their AFH in later years. For program participants that will submit an AFH in later years, HUD anticipates taking additional steps to reduce regulatory burden, which may include dissemination of best practices obtained from the first round of AFH submissions.

Assuming approximately the same number of PHAs choose to partner with entitlement jurisdictions in the first round of AFH submissions (joint AFH), the burden estimate for completing an AFH would increase somewhat, to take into account some additional effort for community participation and goal setting. However, the cost of conducting the analysis would be shared. For instance, PHAs could conduct the portion of the assessment related to publicly supported housing, with the entitlement jurisdiction conducting the bulk of the remainder of the analysis. There would be some costs for the two types of program participants to coordinate and communicate with each other, but in general total costs are expected to be less than if each program participant chose to complete their own separate AFH.

Using the estimated hours of the effort required by type of program participant, and assuming approximately 25 entitlement jurisdictions will partner with 25 PHAs to submit joint AFHs, the first year's burden would be approximately 9,000 total hours (6,000 for 25 entitlement jurisdictions and 3,000 for 25 PHAs). This estimate is included within the total estimated burden.

HUD has committed to provide technical assistance to program participants in completing their AFHs, and HUD anticipates targeted technical assistance for the relatively small number of program participants that would be required to submit an AFH in the first year following the effective date of the AFFH final rule. Such targeted

technical assistance is anticipated to mitigate burden due to the change in the AFH from the AI model which relied heavily on the Fair Housing Planning Guide that was last issued in the 1990s.

### Small Entities

HUD has adopted several important changes to reduce burden for small entities in particular. HUD's AFFH final rule includes a delay in the submission date for small entitlement jurisdictions, defined as jurisdictions receiving \$500,000 or less in Fiscal Year (FY) 2015 CDBG funds, and small PHAs that are qualified PHAs (with respect to size are defined as PHAs with fewer than 550 units, including public housing and section 8 vouchers).

The costs for entitlement jurisdictions receiving a small CDBG grant are included in the total burden estimate for this notice, even though they have a later AFH submission date and their costs will arise in later years. The burden estimate also allows that some qualified PHAs may choose to participate with entitlement jurisdictions that will use this Assessment Tool, which is the subject of this notice. However, because many such PHAs are located outside of metropolitan areas, HUD anticipates that these PHAs will choose, instead, to partner with a State. All program participants that are required to submit an AFH under the AFFH final rule are encouraged to partner with other entities to submit a joint AFH, or regional AFH.

Also, as stated above, the estimated burden per program participant is an average within a wider range of actual costs. Smaller program participants will have much less total burden both in terms of staff hours and costs.

### Encouraging Coordination



All HUD program participants are greatly encouraged to issue joint AFHs and to consider regional cooperation. More coordination in the initial years between entitlement jurisdictions and PHAs will reduce total costs for both types of program participants in later years. In addition, combining and coordinating some elements of the Consolidated Plan and the PHA Plan will reduce total costs for both types of program participants. Completing an AFH in earlier years will also help reduce costs later, for instance by incorporating the completed analysis into later planning documents, such as the PHA plan, will help to better inform planning and goal setting decisions ahead of time.

The Revised Assessment Tool is available at [http://www.huduser.org/portal/affht\\_pt.html](http://www.huduser.org/portal/affht_pt.html). Information on the estimated public reporting burdens is provided in the following table.

**REPORTING AND RECORDKEEPING BURDEN:**

|   | <b>Number of Respondents *</b>  | <b>Number of Responses Per Respondent</b> | <b>Frequency of Response**</b>   | <b>Estimated Average Time for Requirement (in hours)***</b> | <b>Estimated Burden (in hours)</b> |
|---|---|---|--|---|------------------------------------|
| <b>CFR Section Reference:</b> § 5.154(d) (Assessment of Fair Housing) | 2,508 total entities (1,194 Entitlement Jurisdictions and approximately 1,314 PHAs) * | 1   | Once every five years (or three years in the case of 3-Year Consolidated Plans) ** |   |                                    |
| Entitlement Jurisdiction  | 1,194   |   |  | 240 ***   | 286,560                            |
| PHAs  | 1,314 *   |   |  | 120 ****  | 157,680                            |
| <b>Total Burden</b>   | 2,508   | 1,194 *                                   |  |   | <b>444,240</b>                     |

\* This template is primarily designed for entitlement jurisdictions, of which there are approximately 1,194, and PHAs seeking to join with entitlement jurisdictions on a jointly submitted AFH. There are 3,942 PHAs and HUD estimates that approximately 1/3 of PHAs may seek to join with an entitlement jurisdiction and submit a joint AFH. The Total Number of responses is listed as 1,194 based on the number of entitlement jurisdictions that will submit AFHs using this Assessment Tool. The total hours and burden are based on the total estimated number of both types of program participants and the “estimated average time” listed for type of program participant.

\*\* The timing of submission depends upon whether an entitlement jurisdiction submits its consolidated plan every 3 years or every 5 years.

\*\*\*As noted in the explanatory text, this is an average within a range, with some AFH requiring either more or less time and effort based on jurisdiction size and complexity. The 240 hour estimate is an

increase from the previous 200 hour estimate in the 60-Day PRA Notice, published on September 26, 2014. The increased time estimate takes into account public comments on the 60-Day Notice. For some joint participants, the division of hours may be higher or lower based on the program participant's areas of expertise, program operations or through mutual agreement.

\*\*\*\*PHAs participating in joint submissions using the Assessment Tool under this notice are assumed to have some fixed costs, including staff training, conducting community participation costs, but reduced costs for conducting the analysis in the assessment itself.

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment from members of the public and affected program participants on the Assessment Tool on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses;

(5) Whether Option A or Option B of the Revised Assessment Tool would be the most effective and efficient way of conducting the analysis with respect to the selection of contributing factors. If one option is preferred over the other, please state the reasons for the preference;

(6) While the Revised Assessment Tool was designed to set minimum AFH requirements as well as providing a straightforward process for HUD to review the AFH,

how might program participants use the template to conduct broader collaborations including more comprehensive cross-sector collaborations? How could the Revised Assessment Tool provide greater flexibility for participants to collaborate and expand upon the framework HUD has set in the Revised Assessment Tool? How could the Revised Assessment Tool allow program participants to incorporate better or additional data, alternative mapping tools, or other data presentations; and

(7) Whether additional changes to the Revised Assessment Tool would better facilitate regional collaboration among program participants.

HUD encourages not only program participants but interested persons to submit comments regarding the information collection requirements in this proposal. Comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF**

**PUBLICATIONIN THE FEDERAL REGISTER]** to [www.regulations.gov](http://www.regulations.gov)

as provided under the “Addresses” section of this notice. Comments must refer to the proposal by name and docket number (FR-5173-N-05).

Dated: July 13, 2015

\_\_\_\_\_/s/\_\_\_\_\_  
Camille E. Acevedo, Associate General Counsel  
for Legislation and Regulations

**[FR-5173-N-05]**